



2008-122

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

August 26, 2008

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Honorable Alan L. King
Jefferson County Judge of Probate
716 Richard Arrington Jr. Boulevard North
Birmingham, Alabama 35203

Probate Judges – Referendum Election –
County Commissions – Ballots – Jefferson
County

Absent legislative authority, the probate
judge is not authorized to include an
advisory referendum on the November 4,
2008, general election ballot.

Dear Judge King:

This opinion of the Attorney General is issued in response to your
request.

QUESTIONS

1. Absent specific legislative authority, does the
Probate Judge of Jefferson County have the legal
authority to include an advisory referendum on the
general election ballot as requested by resolution of the
Jefferson County Commission?

2. If the probate judge has the legal authority,
does Jefferson County have the authority to pay for the
additional costs that are associated with the referen-
dum, if any, such as the printing of ballots?

FACTS AND ANALYSIS

Your request states that the Jefferson County Commission passed a res-
olution on August 14, 2008, calling for an advisory referendum to be placed on
the November 4, 2008, general election ballot. The referendum relates to possi-
ble solutions to the Jefferson County sewer system debt. This Office has pre-
viously determined that a county, as a political subdivision of the state, can

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exercise only the authority conferred on it by law, and there is no general authority for a county to include an advisory referendum on a ballot. Opinion to Honorable Arthur Payne, Member, House of Representatives, dated January 5, 1999, A.G. No. 99-00074. A county commission is specifically authorized to alienate or dispose of public parks and playgrounds, other public recreational facilities, and public housing projects if a majority of the qualified electors of the county approve of the disposal in a referendum election held for that purpose. ALA. CODE §§ 35-4-410 to 35-4-412 (1991).

This Office has also determined that there is no general authority for a probate judge to include an advisory referendum on a ballot. Opinion to Honorable T. Dwight Reid, Attorney, City of Saraland, dated March 27, 2006, A.G. No. 2006-075. In that opinion, the City of Saraland wanted the probate judge to include an advisory referendum on the primary election ballot asking the citizens of the city if they favored the creation of a city school system. The opinion further stated as follows:

The Legislature has granted the probate judge the authority to call a referendum only in specific instances. For example, this Office has recognized that the probate judge may set a referendum election on the incorporation of an unincorporated community under section 11-41-2 of the Code of Alabama [Opinion to Honorable Adrian T. Johns, Judge of Probate, Baldwin County Probate Judge's Office, dated August 28, 2002, A.G. No. 2002-325]; on the classification of a county as a wet or dry county under section 28-2-1 of the Code of Alabama [Opinion to Honorable Mac Smith, Judge of Probate, Cleburne County, dated February 10, 1984, A.G. No. 84-00157]; and on the annexation of property by a city under sections 11-42-2 and 11-42-43 of the Code of Alabama [Opinions to Honorable Don Davis, Probate Judge, Mobile County, dated May 7, 2003, A.G. No. 2003-142; and Honorable Luke Cooley, Judge of Probate, Houston County, dated March 6, 1997, A.G. No. 97-00124].

Id. at 2. This Office is not aware of any specific legislation authorizing the probate judge to include a referendum election with respect to the sewer system on the general election ballot. Accordingly, absent any general or specific legislative authority, the probate judge is not authorized to include an advisory referendum on the November 4, 2008, general election ballot. Given this answer to Question 1, there is no need to address Question 2.

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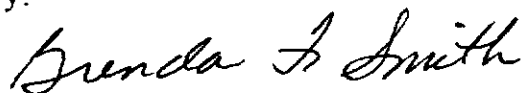
CONCLUSION

Absent legislative authority, the probate judge is not authorized to include an advisory referendum on the November 4, 2008, general election ballot.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BFS

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